

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANDREW A. HERZOG,)	
)	
Plaintiff,)	8:09CV379
)	
v.)	
)	
NEBRASKA STATE SENATES)	ORDER
OFFICE,)	
)	
Defendant.)	
_____)	

This matter is before the Court on plaintiff's motion for leave to proceed in forma pauperis ("IFP") (Filing No. [2](#)). Upon review of the record, the Court finds that plaintiff is financially eligible to proceed IFP, and the Court will presume that plaintiff is not a prisoner for the purposes of the Prison Litigation Reform Act ("PLRA").

The term "prisoner" under the PLRA "means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."

[*Kolocotronis v. Morgan*, 247 F.3d 726, 728 \(8th Cir. 2001\)](#) (citing [28 U.S.C. § 1915\(h\)](#)). A person involuntarily committed as a mental patient, and not as a result of a criminal conviction, is

not a "prisoner" for the purposes of the PLRA. Id.; see also Jackson v. Johnson, 475 F.3d 261, 266 (5th Cir. 2007); Willis v. Smith, No. C04-4012-MWB, 2005 WL 550528, *9 (N.D. Iowa 2005).

The record does not disclose whether plaintiff's current commitment to the Norfolk Regional Center arises from any criminal conviction. However, to facilitate a more expeditious resolution of this case, the Court will presume that plaintiff is residing at the Norfolk Regional Center as a patient and not as the result of a criminal conviction. Accordingly,

IT IS ORDERED that plaintiff's motion for leave to proceed IFP (Filing No. 2) is granted, and plaintiff is relieved from payment of the filing fee in this matter.

DATED this 13th day of November, 2009.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
UNITED STATES DISTRICT COURT